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Mark Chamber
CUYAHOGA COUNTY FISCAL OFFICE

**To be recorded with Deed
Records - ORC § 317.08**

AMENDED AND RESTATED ENVIRONMENTAL COVENANT

This Amended and Restated Environmental Covenant (the "Environmental Covenant") is entered into by Owner's Choice, LLC ("Owner") and any Holders of the Property ("Holders") and the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting the Property described in section 2 herein ("the Property"), to the activity and use limitations set forth herein.

Whereas, previous owner and operator at the Property operated an ink formulation manufacturing business. The previous owner and operator abandoned wastes and/or unused materials from their operations in a low-lying area behind the facility creating an unpermitted hazardous waste management unit.

Whereas, On December 6, 2017, Owner's Choice, LLC purchased the Property from a sheriff's auction.

Whereas, on November 28, 2018, Ohio EPA determined that Owner's Choice, LLC established and operated an unpermitted hazardous waste treatment, storage, and disposal facility.

Whereas, in April 2019 with revisions completed in August 2019, Owner's Choice, LLC submitted a Sampling and Analysis Plan (SAP). Sampling was completed in January and July 2020.

Whereas, On February 23, 2022, Ohio EPA and Owner's Choice entered into a Consent Order with the Cuyahoga County Court of Common Pleas requiring the submittal and implementation of a hazardous waste closure plan in lieu of submittal of a hazardous waste installation and operation permit.

Whereas, On February 24, 2022, Owner's Choice, LLC submitted a closure plan for review and approval. On May 11, 2022, Ohio EPA approved a closure plan submitted by Owner's Choice, LLC.

Whereas, based on concentrations of benzo(a)pyrene detected above Composite Worker Regional Screening Levels (RSLs), (1) an approximate 25-feet by 15-feet by 2-foot area of soil was excavated in Hazardous Waste Management Unit # 1, with concentrations of Chemicals of Concern (COCs) thereat previously demonstrated to be below Composite Worker RSLs; and (2) an approximately 40-foot by 10-foot area of asphalt was also excavated, with all excavated soil and asphalt material being thereafter removed from the Property.

Whereas, because of the level of contamination left in the media at the Property, Activity and Use Limitations will be placed on the Property to prohibit residential land use and prohibit the extraction and use of groundwater.

Whereas, the Administrative Record is maintained as the file titled Owner's Choice, LLC in the Ohio EPA Northeast District Office, 2110 Aurora Road, Twinsburg, Ohio 44087.

Whereas, on July 26, 2022, Owner recorded a Declaration of Environmental Covenant with the office of the Cuyahoga County Recorder as Instrument Number 202207260116 (the "Original Environmental Covenant").

Whereas, by entering into and recording this Environmental Covenant, Owner desires to amend and restate the Original Environmental Covenant, this Environmental Covenant to replace and supersede the terms and provisions of the Original Environmental Covenant.

Now therefore, Owner and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.
2. Property. This Environmental Covenant concerns an approximately 3.066 acre tract of real property owned by Owner's Choice, LLC, located at 21500 St. Clair Avenue, in Cuyahoga County, Ohio, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein ("Property").
3. Owner. This Property is owned by Owner's Choice, LLC ("Owner"), who resides or is located at 9324 Lori Jean Drive, Mentor, Ohio 44060.

4. Holder. Pursuant to ORC § 5301.81, the holder of this Environmental Covenant ("Holder") is the Owner listed above.

5. Activity and Use Limitations. Owner hereby imposes and agrees to comply with the following activity and use limitations:

A. The Property shall not be used for residential activities. The term "residential activities" shall include, but not be limited to, the following:

- (i) Single and multi-family dwelling and rental units;
- (ii) Day care centers, preschools and (K-12) educational facilities;
- (iii) Correctional facilities;
- (iv) Transient or other residential facilities; and
- (v) Production of food-chain products by agricultural means for animal or human consumption.

B. Limitation on Ground Water Use and Extraction. No extraction of ground water for potable use.

If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Property, identified in paragraph 11 below, constitutes a breach of the activity and use limitations, Owner or Transferee shall notify Ohio EPA within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner[s], during the time that the Owner owns the Property or any portion thereof, and upon all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law.

8. Rights of Access. Owner hereby grants to Ohio EPA's authorized representatives the right of access to the Property for implementation or enforcement of this Environmental Covenant and shall require such access as a condition of any transfer of the Property or any portion thereof.

9. Compliance Reporting. Owner or any Transferee shall annually submit to Ohio EPA, before June 1st of each year, written documentation, which complies with the requirements of Ohio Administrative Code (OAC) rule 3745-50-42(B)-(D), verifying that the activity and use limitations remain in place and are being complied with in accordance with this Environmental Covenant.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED_____, 20____, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE COUNTY RECORDER ON _____, 20____, IN [DOCUMENT _____, or BOOK____, PAGE _____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

A. The Property shall not be used for residential activities. The term "residential activities" shall include, but not be limited to, the following:

- (i) Single and multi-family dwelling and rental units;
- (ii) Day care centers, preschools and (K-12) educational facilities;
- (iii) Correctional facilities;
- (iv) Transient or other residential facilities; and
- (v) Production of food-chain products by agricultural means for animal or human consumption.

B. Limitation on Ground Water Use and Extraction. No extraction of ground water for potable use.

Owner or Transferee, if applicable, shall notify Ohio EPA within *ten (10)* days after each conveyance of an interest in the Property or any portion thereof. The notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- A. that the Owner is the sole owner of the Property;
- B. that the Owner hold fee simple title to the Property and that the Owner conducted a current title search that shows that the Property is not subject to any interests or encumbrances that conflict with the activity and use limitations set forth in this Environmental Covenant;¹
- C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- D. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected;
- E. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee, if applicable; and the Director of the Ohio EPA, pursuant to ORC § 5308.82 and 5301.90 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and the Owner or Transferee of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA.

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

15. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the County Recorder's Office.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the County Recorder.

17. Distribution of Environmental Covenant. The Owner shall distribute a file-and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA.

18. Notice. Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

As to Ohio EPA:

Division of Environmental Response and Revitalization
Ohio EPA – Central Office
Lazarus Government Center
Division of Environmental Response and Revitalization
PO Box 1049
Columbus, Ohio 43216-1049
Attn: DERR Records Management Officer

Or, send electronically to: records@epa.state.oh.us

And

Ohio EPA – Northeast Ohio District Office
2110 Aurora Road, Twinsburg, Ohio 44087
Attn: DERR Site Coordinator for Owner's Choice, LLC (OHD004185153)

As to Owner and Holder:

Gregory Gibson
9324 Lori Jean Drive
Mentor, Ohio 44060

[Owner Signature Appears on Following Page]

[No Further Text Appears on This Page]

The undersigned represents and certifies that the undersigned is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

OWNER'S CHOICE, LLC



Gregory Gibson, Member


10/6/2022

Date

State of Ohio)
) ss:
County of Cuyahoga)

Before me, a notary public, in and for said county and state, personally appeared Gregory Gibson, a duly authorized representative of Owner's Choice, LLC, who acknowledged to me that he did execute the foregoing instrument on behalf of the company.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 6th day of October, 2022.



Notary Public

[Ohio EPA Signature Appears on Following Page]

[No Further Text Appears on This Page]



DAVID B. WAXMAN
ATTORNEY AT LAW
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION HAS NO EXPIRATION DATE
SEC.-147.03 O.R.C.

OHIO ENVIRONMENTAL PROTECTION AGENCY

Laurie A. Stevenson, Director

Date:

11/16/2022

State of Ohio)
) ss:
County of Franklin)

Before me, a notary public, in and for said county and state, personally appeared MARK S. JOHNSON, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 22ND day of October, 2022.

NOVEMBER

Notary Public

Charma Diane Casteel

CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES

May 10, 2024



This instrument prepared by:

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